Supreme Court, U.S.
FILED
JUL 24 1991
OFFICE OF THE CLERK

No. 91-30

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1990

IMPERIAL IRRIGATION DISTRICT,
Petitioner,

vs.

STATE WATER RESOURCES CONTROL BOARD,
Respondent.

ENVIRONMENTAL DEFENSE FUND, INC.,
Intervenor.

On Petition for Writ of Certiorari from the California Court of Appeal, Fourth Appellate District, Division One

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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REPLY TO BRIEF IN OPPOSITION

Respondent has raised some fact-specific challenges[1] ("ROB", 7-9), but they cannot obscure the existence and importance of the Federal question presented.

I. THERE IS A DIRECT CONFLICT ABOUT PETITIONER'S IRRIGATION PRACTICES BETWEEN FEDERAL AND STATE REGULATORS.

Respondent, in arguing "no conflict" (ROB, 11-15),[2] misquotes IID's present perfected rights which are:

> "*The Imperial Irrigation District* in annual quantities not to exceed (i) 2,600,000 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 424,145 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with a priority date of 1901." (Emphasis in original.)

Arizona v. California, 439 U.S. 419, 429 (1979).[3]

Admitting that "the Board did . . . impose conditions on IID's use" (ROB, 11), Respondent argues that such "conditions in no way interfere with the jurisdiction of the Secretary . . ." *Id.* Such sophistry overlooks the usufructuary nature of all water rights. Control of the usufruct is the

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[1]These challenges will be refuted in Section III. Infra, 5.

[2]MWD, at first, sees no "conflict" (MWD, 10), then goes on to characterize IID's reference to California's Water Code section 1011 (Appendix, 351-352) as "gratuitous," manifesting a "disturbing intent *to undermine the Secretary's exclusive BCPA contract water allocation authority*" and notes any attempt by IID to transfer water other than in accord with BCPA priorities "*would clearly conflict with the Secretary's exclusive BCPA water allocation authority*" (MWD, 13-14). IID welcomes this MWD concession of conflict between the Board and the Secretary. "Appendix" references are to the Appendix To Petition.

[3]Respondent substituted the word "amount" for the words "the quantity of mainstream water" and *added* "reasonably." ROB, 13.

power to destroy or substantially harm the right itself.[4] If *Imperial Irrigation District v. State Water Resources Control Board*, 225 Cal. App. 3d 548, 275 Cal. Rptr. 250 (1990) ("*IID-II*") is to become an integral part of the "Law of the River",[5] then state policy and not Federal policy will eventually control the use of Colorado River water. IID-II appoints the Board as "*the* expert" (Appendix, 33) and ousts the Secretary of powers delegated by Congress and defined by this Court. *Arizona v. California,* 373 U.S. 546, 583-584 (1963) ("Arizona *I*"). (Emphasis in original.)

Under both Federal and State law the use of water must be for beneficial purposes and "*reasonably* required." See Appendix, 374. Emphasis added unless otherwise noted. The antithetical terms "reasonable" and "unreasonable or waste" are plagued with uncertainty, vary according to circumstances, and provide necessary flexibility to meet changing conditions.[6]

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[4]The Secretary disagreed with the SWRCB's finding of misuse because "several points did not appear to be given adequate consideration (Appendix, 338) ... [and] implementing additional conservation measures ... have been economically infeasible [for IID]." Appendix, 339. The Secretary was "pleased" with IID's "progressive" conservation efforts. See Pet., nn.3, 5.

[5]See, Nathanson, *Updating the Hoover Dam Documents* (1978), Chapter I, 1-28.

[6]Professor Stephen F. Williams uses a classic definition: "*Waste* is a preventable loss the value of which exceeds the cost of avoidance." 23 *Natural Resources Journal* 7, n.2 (1983). "Waste" is to use water "needlessly or ... without serving a purpose.... [I]t is necessarily relative." *Meridian, Ltd. v. San Francisco*, 13 Cal. 2d 424, 447, 90 P.2d 537, 548 (1939). "[T]he right of property in water is usufructuary, and consists not so much of the fluid itself as the advantage of its use." *National Audubon Society v. Superior Court*, 33 Cal. 3d 419, 441, 658 P.2d 709, 724, 189 Cal. Rptr. 346, 361 (1983). The trial court found "that IID's uses of water, *in themselves*, were [not] unreasonable." Appendix, 35.

It is inescapable that the underlying issue is whether IID's irrigation practices conform to *applicable* legal standards of reasonableness. The Secretary was charged by Congress "to make certain that the [Project] waters were effectively *used*" (*Arizona I,* 373 U.S. at 589). He concluded that IID's practices were and continue to be reasonable and in conformity with 43 C.F.R. Part 417. According to the Secretary, "California's oldest irrigation district" (ROB, 16) was as efficient "as neighboring irrigation projects" (Appendix, 322) and had installed an impressive array of conservation measures (Appendix, 319-321) since the Special Master's 1960 report (ROB, 14; MWD, 12-13). Its efficiency was noticeably better than Coachella's. See Rep. App., 2.

In direct conflict, the State Board, relying upon its initial finding of "misuse" (Decision 1600; Appendix, 220), has ordered IID "to fund . . . using District resources" (WR 88-20, "2"; Appendix, 98) "the required water conservation implementation plan." *Id.* at "5"; Appendix, 99. The severe conflict between Federal and state regulatory authority could not be more clear.[8]

II. RECENT EVENTS RECONFIRM THE SECRETARY'S INTENTION TO EXERCISE POWER OVER THE USE OF COLORADO RIVER WATER.

On June 4, 1991, the Secretary, per the Regional Director, transmitted draft regulations for administering the use of Boulder Canyon Project water. Although Respondent asserts that the draft regulations "confirm the role of states in determining reasonable use" (ROB, 6, see page 12). How-

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[8]These widely disparate conclusions present, under *Arizona I*, 373 U. S. at 586, "inconsistent state laws," under *California v. United States*, 438 U.S. 645, 674 (1978), an improper interference "with the Secretary's power to determine," and under *Rock Creek*, 495 U.S. at ____, 109 L. Ed. 2d at 488, "a dual system of futile duplication" which would "thwart full realization of the benefits Congress intended this national project to bestow." *Arizona I*, 373 U.S. at 580.

ever the role may eventuate it will be a secondary one. These regulations, carefully and explicitly, reserve the final decision making power, consistent with his supremacy role, to the Secretary.

For example, state determinations "*may* be respected." 43 C.F.R. Section 415.6(c)(1); Rep. App., 29.[9] The Regional Director "*may* direct a water user" to meet requirements of "appropriate state authority." Section 415.17(f); Rep. App., 56. The *Regional Director* will consult with state agencies "consistent with the following guidelines": § 415.10(a); Rep. App., 40[10]. See also §§ 415.7(a), (b)(5),(b)(6)(iii), Rep. App., 31-34; 415.11(a)(4), (c), Rep. App., 43-44; 415.12, Rep. App., 44-46; 415.13, Rep. App., 46-50; and 415.20(a), Rep. App., 60. " 'Entitlement' means a right . . . pursuant to contract with the Secretary in compliance with Article II(B)(5) of the Decree". § 415.4(o), Rep. App. 19. " 'Unauthorized' use means any use . . . not authorized either under the Decree or a contract with the Secretary." § 415.4(rr), Rep. App., 23; see "Waste". § 415.4(uu), Rep. App. 24.

Instead of derogating 30 years of Federal supervision, the regulations expand upon the process. Section 415.1 states:

> "These regulations establish criteria, consistent with applicable *Federal law,* which . . . water users will comply with *in utilizing,* water from the mainstream of the Colorado River . . . . " Rep. App., 15.

Consultation with the states represents "cooperative federalism" (*California v. United States,* 438 U.S. 645, 650

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[9]In order to show the full breadth of the draft regulations, they are printed in full in the Appendix hereto. "Rep. App.", 14-67. Borders refer to text not included with the material contained in MWD's Appendix, 12-22.

[10]Separate types of guidelines are made for "municipal contract users" (§ 415.10(a)(6)) and "agricultural contract users." (§ 415.10(a)(7)), Rep. App., 41.

(1978)), but in no way suggests that state regulators are to replace the supremacy role of the Secretary.

By a letter of June 5, 1991, the Regional Director made it unmistakably clear to the Colorado River Board that if its agricultural users failed to agree how to "assign responsibility for inadvertent overruns" by "March 31, 1992," the Director would "administratively divide the water." Rep. App., 68-69. Cooperation and mutual agreements are certainly encouraged, but where there are, as at bar, clear conflicts, then the Secretary's will must prevail.

III. THERE ARE NO MISSTATEMENTS OF FACT.

A. The Facts Are Correctly Stated.

Respondent claims that IID's characterization, requiring IID to pay damages, is "nothing short of fanciful." ROB, 7. However, the gist of IID's argument is that the Board's requirements, for IID to fund "water conservation measures *using District resources*" (WR 88-20; Appendix, 98) and "for the benefit of people, generally, in the state" (*IID-II;* Appendix, 33-34), directly conflict with and intrude upon the Secretary's supremacy over regulation of the irrigation uses of Colorado River water.

B. The Court Of Appeal Did Consider Order WR 88-20.

Respondent chooses not to defend decision WR 88-20 (Appendix, 53), and incorrectly asserts it "was never reviewed by the California courts." ROB, 2; see also 4 and 8. Since it was rendered after the Appeal (8/3/88; Appendix, 51) from the trial court judgment (5/5/88; Appendix, 42), it was not reviewed by the Superior Court.[11] The

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[11]Under California law, Order 88-20 was merely a continuum of the underlying decision of "misuse" made by the Board's Decision 1600. Appendix, 151 at 220. See *Fisher v. City of Berkeley,* 37 Cal. 3d 644, 694, 693 P.2d 261, 300-301, 209 Cal. Rptr. 682, 721-22 (1984); *Davis v. Superior Court,* 169 Cal. App. 3d 1054, 1057-1058, 214 Cal. Rptr. 721, 723-25 (1985); *Grasko v. Los Angeles Board of Education,* 31 Cal. App.

Court of Appeal rejected Respondent's claim of mootness and *found* that "WR 88-20 . . . renders the facts summarized in Decision 1600 largely outdated, and an order . . . which *substantially supplants* the order contained in Decision 1600." *IID-II,* Appendix, 15. "*[B]oth orders* . . . retained open-ended jurisdiction . . . based upon assertions of jurisdiction which *are* the *subject* of this appeal." Appendix, 16. In addition, it was "[a]n obvious conclusion . . . that Imperial I and the *rulings* (note the plural form) of the Board have eroded IID's bargaining position . . . ." *IID-II;* Appendix, 37.

Further, it is incomprehensible how Respondent can earnestly assert that "*neither decision* required IID to fund expensive capital improvements solely at its own cost for the benefit of other users (ROB, 8) . . . [and that WR 88-20] merely required IID to take steps to use its share of Colorado River water more efficiently, and to *explore* sources that would assist it in doing so." *Id.* at 12. In fact, IID "initiated" (Appendix, 66) efforts with MWD and was rebuffed in efforts with the state. See, exchange of correspondence between Directors of DWR and IId. Rep. App., 3-5, 6-7, and 8-10.

The fact that the order *permitted* IID, by use of the disjunctive word "or," to satisfy the requirement "to conserve at least 100,000 acre-feet per annum by January 1, 1994" (Order, "1"; Appendix, 98) by "an executed agreement with a separate entity *willing* to finance" (Order, "2"; Appendix, 98) does not create a "mischaracterization" (ROB, nn.2, 8-9) nor remove the intended legal force of the order itself.[12] No other entity was *ordered* to fund the conservation measures.

3d 290, 295, 299, 107 Cal. Rptr. 334, 337-340 (1973); Cal. Code of Civ. Proc. § 1094.5(g).

[12]If, as CV contends, "what Decision 1600 does is maximize the supply of water available *to the Secretary*" (CV, 10), the "power" question thusly presented is: how much water can the Board *take* under the guise

C. The MWD/IID Agreement Is Irrelevant To The Issue Of Supremacy.

Respondent points out that IID submitted a copy of "the MWD-IID agreement" (ROB, 5; see, *IID-II;* Appendix, 15) and attempts to use it to shield WR 88-20 from the glaring economic hardships it thrusts, directly, explicitly, and *only* upon IID.

However, the substantial adverse impacts on IID of the "rulings" by the Board were not fanciful (ROB, 7) to the Court of Appeal. It recognized the dire consequences for IID.[13] It noted that even "Decision 1600 . . . substantially erode[d] IID's otherwise virtually complete control over its water use."[14] *IID-II,* Appendix, 24; see 37. Thus, this wholly

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of misuse without the Secretary's concurrence? Can all of it be taken by the Board "for more important uses"? *IID-II*; Appendix, 37. If not all, how much?

[13]Moreover, the voluntary payments by MWD (ROB, 9; see, also, MWD, 6-9) pertain only to the Board's "initial step . . . [to conserve] 367,900 acre-feet per annum." Appendix, 97. The Board retained "jurisdiction to review implementation of the *initial plan and* future water conservation measures." Ibid. There is no end in sight for the Board's plans to reorder the Secretary's approval of IID's irrigation practices.

[14]IID's water use practices are supervised by the Secretary of Interior, applicable state requirements, (e.g. the *Agricultural Management Planning Act of 1986,* Cal. Water Code §§ 10800-10855; "Ralph M. Brown Act," Government Code §§ 54950-54962, etc.), and the citizens who elect its Board of Directors. The Court ignored the almost daily supervision by the Secretary over IID. The Board practically snooted the Secretary's testimony and request for reconsideration. For example, the Secretary's testimony was not included in Table 2 (Appendix, 186-187) because "different values [were] reflected in the various USBR documents." Decision 1600, Appendix, 191.

In fact, the testimony given (Appendix, 309-336; see Table 1 at 315) about "Water Budget Accounting" was substantially confirmed upon completion, in July, 1984, of the Burec/IID study which had commenced in 1980. See Pet., 10-11; WR 88-20, Appendix, 74. This is the Board's first incursion into the Colorado supply, but the Secretary has been dealing with all aspects of it, pursuant to congressional direction, for over half a century.

voluntary agreement is not relevant for the purpose of considering the naked legal power of the Board to contradict supervisorial decisions by the Secretary.

IV. THE ISSUE OF FEDERAL SUPREMACY IS RIPE FOR DECISION BY THIS COURT.

Respondent does not dispute existence of a manifestly clear Federal question but contends that the issue was "not properly preserved." ROB, 11. Nor is there any disagreement that the record below is replete with material which forms a rational basis for deciding the patent Federal question. See Pet., 4-7.

In these circumstances, the requirement that a Federal issue be pressed and passed on below is not jurisdictional. See, *Three Affiliated Tribes of Fort Berthold v. Wold Engineering*, 476 U.S. 877, 883 (1986); *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 698-99 (1984); *Pruneyard Shopping Center v. Robins*, 447 U.S. 74, 85 n.9 (1980). Indeed, the petition presents a pure legal issue that can properly be addressed by this Court even if not addressed by the lower court. See, *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985).

Actually, the Court of Appeal effectively decided the Federal question. Therefore, "there can be no question as to the proper presentation of a federal claim." *Raley v. Ohio*, 360 U.S. 423, 436-37 (1959); *Payton v. New York*, 445 U.S. 573 (1980); *Jenkins v. Georgia*, 418 U.S. 153, 157 (1974); *Ocala Star-Banner Co. v. Damron*, 401 U.S. 295, 299 n.3 (1971); *Franks v. Delaware*, 438 U.S. 154, 161-162 (1978). Most recently in *Stevens v. Dep't of Treasury*, 500 U.S. ____, 111 S. Ct. 1562, 114 L. Ed. 2d 1 (1991), this Court reaffirmed that plenary review is entirely appropriate if the lower court "decided the substantive issue presented." *Id.* at ____, 111 S. Ct. at 1567, 114 L. Ed. 2d at 12.

At bar, the California Court of Appeal was faced with a challenge to the authority of the SWRCB to impose requirements on water allocated by Federal law to IID "for potable and irrigation purposes." Appendix, 374. It recognized

IID's rights were derived from "federal statute, United States Supreme Court decision, and a seven-party agreement allocating water among Southern California users." *IID-II*; Appendix, 22. After finding that "the Board's intrusion into IID's use of water in its district was substantial" (*Id.* at 24), the Court nonetheless concluded that "the Board's decision in *no way interfered* with IID's contractual and statutory entitlement to Colorado River water." *Id.* IID seeks certiorari precisely because the Board's rulings *did* interfere with its statutory entitlement to Colorado River water by usurping the Federal role in determining use of that water.

Finally, issues about the administration and use of Colorado River water developed pursuant to the BCPA are uniquely of primary importance for this Court in the Original Action and under its decrees in *Arizona v. California*, 376 U.S. 340 (1964) and 439 U.S. 419 (1979).[15] The Secretary plans, also, to utilize "the Decree," if necessary, to enforce its draft regulations. § 415.22(g), Rep. App., 67.

It is of extreme public importance for this Court to resolve the obvious and critical Federal question about

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[15]For example, in *Arizona v. California*, 460 U.S. 605, 638 (1983), this Court left open boundary dispute issues pertaining to certain Indian reservations. Junior right holders, MWD and CV, proceeded in federal district court and secured a judgment nullifying decisions about the extent of the boundaries. *Metropolitan Water Dist. v. United States*, 628 F. Supp. 1018, 1025 (S.D. Cal. 1986). The United States Court of Appeal remanded with directions "to dismiss for lack of jurisdiction." *Metropolitan Water District v. United States*, 830 F.2d 139, 141 (9th Cir. 1987). This Court, equally divided (Marshall not participating), affirmed. *California v. United States*, 490 U.S. 920 (1989).

The issue questions decisions by the Secretary which would adversely impact the water rights of junior right holders. After the dismissal, MWD and CV filed a joint motion "to reopen Decree" (July 19, 1989) which was granted. No. 8, Original. *State of Arizona, Plaintiff v. State of California, et al.*, ____ U.S. ____, 107 L. Ed. 2d 180 (1989). The matter is now pending before this Court which on November 13, 1990 appointed a new special master. ____ U.S. ____; 112 L. Ed. 2d 409 (1990).

whether it is the Secretary's decision or the state administrative agencies that will govern the irrigation practices of Colorado River water users. "Reasonableness" involves numerous complex factors which rival, or exceed matters such as determination of "reasonable" public utility rates, etc. See Decision 1600, Appendix, 182, "extremely difficult." This Court retains a uniquely important role in overseeing the complex regulatory structures that govern these rights. See *Bryant v. Yellen,* 447 U.S. 352, 366, n.28, 375 (1980).

V. CONCLUSION

If *IID-II* is allowed to stand, IID, as well as all other California users with Section 5 contracts, will be subjected to overlapping, duplicative, and conflicting regulatory orders about the use of Boulder Canyon Project water. Such a result would be contrary to expressed congressional intent for this national project[16] and, also, to binding precedent of this Court.

For these reasons, the Petition should be granted.

Respectfully submitted,

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and
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A Professional Law Corporation

By _____
Paul D. Engstrand
Attorneys for Petitioner
Imperial Irrigation District

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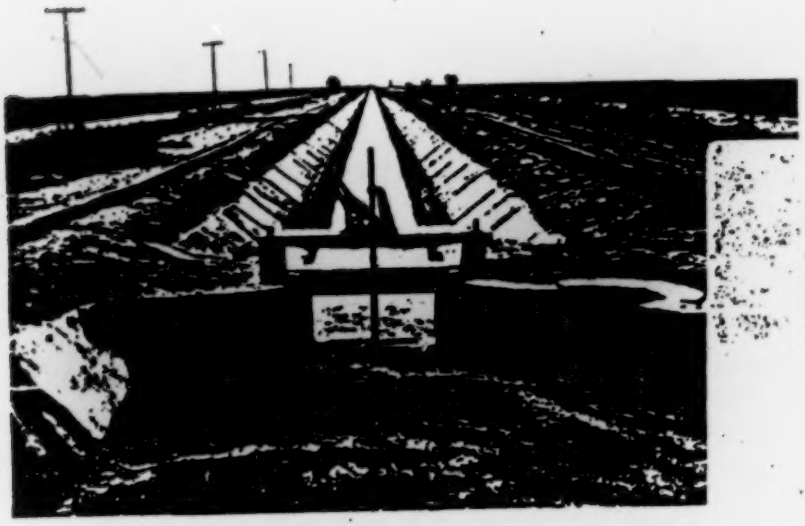
[16]Problems which vex Congress about future national and international agricultural programs, droughts, and reclamation reform are not present here. See, *The Broken Promise of Reclamation Reform,* 40 Hastings Law Journal, 657 (1989); *cf., Peterson v. United States,* 899 F.2d 799 (9th Cir. 1990), the "hammer clause" was a "reasonable way for Congress to further *its* federal reclamation policy . . . and water conservation." Id. at 814.

Investigation Under
California Water Code Section 275
of
USE OF WATER BY IMPERIAL IRRIGATION DISTRICT



DWR
Item 4, Exhibit 1

State of California — DEPARTMENT OF WATER RESOURCES
Southern District — The Resources Agency

December 1981

— DWR EXHIBIT 1

STATE WATER RESOURCES CONTROL BOARD
APPLICATION NO. IID Hearing
DWR EXH. 1
FOR IDENTIFICATION 092783
IN EVIDENCE 121483

323 C
File 13.C2
Folder 2
Item 4, Exh 1

save water

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TABLE 10*
DELIVERY EFFICIENCIES OF IRRIGATION DISTRICTS
In percent

	1975	1976	1977	1978
Imperial Irrigation District				
unit efficiency	73	80	81	77
district efficiency	65	71	73	70
Coachella Valley W.D.				
unit efficiency	51	50	55	53
district efficiency	43	44	46	46
Reservation Div. I.D.				
unit efficiency	45	47	58	60
district efficiency	36	38	47	50
Y.C.W.U.A. (Valley Div.) I.D.				
unit efficiency	64	80	71	72
district efficiency	49	60	54	52
Yuma Mesa Irrig. & D.D.				
unit efficiency	33	33	29	32
district efficiency	30	30	27	30
Unit "B" Irrig. Dist.				
unit efficiency	33	32	35	38
district efficiency	32	31	33	36
Yuma Irrigation Dist.				
unit efficiency	62	63	61	61
district efficiency	59	61	59	53
North Gila Irrig. Dist.				
unit efficiency	29	40	46	42
district efficiency	28	30	43	40
Wellton-Mohawk Irrig. Dist.				
unit efficiency	55	52	63	64
district efficiency	50	47	57	57
Colorado River Indian Tribes				
unit efficiency	57	65	76	64
district efficiency	44	50	58	48
Palo Verde Irrig. Dist.				
unit efficiency	46	33	45	42
district efficiency	36	26	35	33

* This table is based on Exhibit C from an "Affidavit of Maurice N. Langley . . ." in Civil Action No. 76-10957 in United States District Court, (no date).
Source: U.S. Bureau of Reclamation, unpublished, 1979.

STATE OF CALIFORNIA — RESOURCES AGENCY

DEPARTMENT OF WATER RESOURCES
P.O. BOX 368
SACRAMENTO
95802
(916) 445-9248

December 31, 1982

Mr. Gerald L. Moore
President of the Board of Directors
Imperial Irrigation District
P.O. Box 1809
El Centro, CA 92244

Dear Mr. Moore:

The State Water Project (SWP) has contractual commitments to deliver 4.23 million acre-feet of water annually. The SWP has not developed enough water to meet that commitment, and in fact by 1987 we expect that the requests of our contractors for water will be met only in normal and above normal years.

To meet the deficit in the SWP supply, the Department of Water Resources is currently considering new sources of water from the Sacramento Valley to expand the present capability of the SWP to meet contractor requests for water in future years. Another source which we believe also merits attention is the acquisition by the SWP of water presently being lost in the Imperial Irrigation District (IID) that could be salvaged, as shown in our December 1981 report. We realize that it's not presently economic for you to salvage much of this water for your own uses. This water could then be delivered by exchange to our Southern California contractors.

We recognize that there are problems with this exchange that would have to be worked out. Some of these include the role of the Department of Interior, water

quality aspects, energy costs, payments for construction, operations, and maintenance, and so on.

Nevertheless, we believe that it is possible for these problems to be solved in ways satisfactory to all parties. We further believe that the value of salvaged water to the SWP would be such that the Department would be able to pay for the implementation of a water conservation program and still make very substantial additional payments to Imperial for salvaged water.

We would like to meet with you to discuss the possibilities for development of a project that would greatly benefit both the SWP and the IID. Please contact Dr. Jack J. Coe, Chief of our Southern District, P.O. Box 6598, Los Angeles, CA 90055, telephone (213) 620-4108, if you would like to meet to discuss this possibility. I am sure if we work together we can arrive at a program of benefit to IID, the SWP, and all of California.

Sincerely,

(sgd) Ronald B. Robie

Ronald B. Robie
Director

cc: Ms. Carole Onorato, Chairwoman
State Water Resources Control Board
1416 Ninth Street, Room 605-2
Sacramento, CA 95814

Mr. Thorton Ibbetson, Chairperson
Board of Directors
The Metropolitan Water District
of Southern California
P.O. Box 6777
Cerritos, CA 90701

Ms. Patricia C. Nagle, Chairperson
Colorado River Board of California
107 South Broadway, Room 8103
Los Angeles, CA 90012

Mr. Myron B. Holburt, Chief Engineer
Colorado River Board of California
107 South Broadway, Room 8103
Los Angeles, CA 90012

IMPERIAL IRRIGATION DISTRICT
EXECUTIVE OFFICE
1284 MAIN STREET
P.O. BOX 1809
EL CENTRO, CALIFORNIA 92244

May 6, 1983

Mr. Howard Easton, Acting Director
Department of Water Resources
1416 9th Street
Sacramento, CA 95814

Dear Mr. Easton:

Your predecessor, Mr. Ron Robie, sent a letter dated December 31, 1982 to our District suggesting that the District consider selling water salvaged through the implementation of a water conservation plan to the State Water Project for use in Southern California.

As you are aware, the District has been undertaking a comprehensive water conservation program since the 1950s. The District's conservation efforts are truly defined in a 13-point water conservation resolution adopted by the District in 1976. This program has been greatly expanded since then and has been well received by Imperial Valley water users. Furthermore, the District has been cooperating with the Bureau of Reclamation during the past three years in a study of water conservation opportunities within the District's service area.

In December 1981 your department notified the District of its findings in its investigation of Mr. Elmore's complaint. We were requested at this time to develop a water conservation program within six months. It is unfortunate that the department felt that the District was not responding to this request and, therefore, referred the matter to the State Water Quality Control Board for a hearing.

Since then, the District has been diligently pursuing discussions with the Colorado River Board, The Metropolitan Water District, and Coachella Valley Water District to find ways to finance many of the water conservation measures identified in the Bureau's study and the department's 1981 investigation.

We would also welcome the opportunity to get together with you to discuss the possibility of selling a portion of any water saved to the State Water Project. As pointed out to Mr. Robie, there are many complex problems in such an exchange that would have to be worked out. Resolution of these problems would take strong effort and time.

We would like to proceed with these negotiations without delay; we would prefer to do so without the threat of a waste or unreasonable use action over our heads. In view of this, we request that the department withdraw its report from the State Board so that necessary discussions between our respective agencies can proceed in a favorable environment.

In closing, I would like to assure you that the District will do all it can in addressing the Department's concerns regarding the water salvage issue. I look forward to your response in this matter.

Sincerely,

JOHN R. BENSON

John R. Benson, President
Board of Directors

cc: Ms. Carole Onorato, Chairwoman
State Water Resources Control Board

STATE OF CALIFORNIA — RESOURCES AGENCY

DEPARTMENT OF WATER RESOURCES
P.O. BOX 368
SACRAMENTO
95802
(916) 445-9248

August 8, 1983

Mr. John Benson, President
Board of Directors
Imperial Irrigation District
P.O. Box 1809
El Centro, CA 92244

Dear Mr. Benson:

I wish to clarify any misconception about the Department of Water Resources' (DWR) intentions with respect to sale or transfer of any water made surplus to the needs of the Imperial Irrigation District (IID) through implementation of water conservation measures.

A letter dated June 1, 1983, from Howard Eastin to you stated:

> "It is my understanding that The Metropolitan Water District of Southern California and the Colorado River Board are working with all concerned parties to assure best utilization of water from the Colorado River. However, it is the Department's position that progress to conserve water from the Colorado River should proceed. Furthermore, if conserved water can be made available, that is surplus to the needs of any of the agencies receiving water from the Colorado River, we would be interested in obtaining the water for the SWP."

On December 31, 1982, the former Director, Ronald Robie, had written to IID expressing interest in meeting with you to discuss the possibilities of DWR purchasing for the State Water Project (SWP) water surplus to the needs of IID. In a letter dated May 6, you wrote to Mr. Eastin, Acting Director, requesting DWR to withdraw its report on Mr. Elmore's allegations of misuse of water before meeting to discuss purchase of water for the SWP. Mr. Eastin's letter was in response to this request.

Both DWR's June 1, 1983, and December 31, 1982, letters may have left the impression that we would pursue a unilateral course of action to acquire Colorado River water for the SWP. At the present time, IID, The Metropolitan Water District, and the Colorado River Board are working with all concerned parties, and within the framework of the California Seven Party Agreement to ensure the best utilization of the Colorado River water. I believe that the parties to that agreement, and other agencies necessarily involved in the allocation of the Colorado River waters, rather than DWR, should determine the terms under which conserved water would be made available to The Metropolitan Water District or other Colorado River users. Accordingly, DWR will not pursue a program to purchase conserved water from IID for the SWP.

Sincerely,

(sgd) David N. Kennedy
Director

cc: Ms. Carole Onorato, Chairwoman
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95801

Mr. John J. Elmore
P.O. Box 156
Brawley, CA 92227

The Metropolitan Water District
of Southen California
P.O. Box 54163, Terminal Annex
Los Angeles, CA 90054

Colorado River Board of California
107 South Broadway, Room 8103
Los Angeles, CA 90012

United States Department of the Interior

BUREAU OF RECLAMATION
LOWER COLORADO REGIONAL OFFICE
P.O. BOX 427
BOULDER CITY, NEVADA 89005

JUNE 4, 1991

To: All Colorado River Contract Water Users

From: Regional Director

Subject: Draft Proposed Regulations for Administering Entitlements to Colorado River Water in the Lower Colorado River Basin (Water Rights)

A copy of the subject draft regulations is enclosed for your information. If adopted, the regulations will implement the criteria by which our office, as the Secretary of the Interior's (Secretary) authorized representative, will fulfill the Secretary's responsibility as watermaster of the lower Colorado River and administer entitlements to the use of its waters. The proposed regulations will enhance the Bureau of Reclamation's (Reclamation) ability to eliminate illegal water diversions by unauthorized users and help ensure that Colorado River water consumptively used in Arizona, California, and Nevada is in fact used by the intended users and is put to beneficial use that does not exceed authorized amounts. Prudent management is especially critical now that management of the lower Colorado River has entered an "era of limits" in which future requests for water are likely to exceed the annual 7.5-million-acre-foot apportionment of water available to the Lower Colorado River Basin under normal conditions.

The proposed regulations are a formal written statement of existing management and operational requirements and guidelines. Therefore, the regulations do not

add new regulatory or environmental obligations. The proposed regulations do, however, propose adding an administrative fee, which would be paid by water users, to offset Reclamation's cost of administering the water entitlements.

Although several iterations of the draft regulations have been circulated within Reclamation and many revisions and refinements have been made, the draft regulations are still being reviewed within Reclamation and are subject to further revision based on that ongoing review. We are not soliciting comments on the regulations from the water users or the general public at this time because this is a preliminary draft. However, contractual water users within the States of Arizona, California, or Nevada may submit comments through the applicable State authority as follows:

Mrs. Elizabeth A. Rieke
Director
Arizona Department of
Water Resources
15 South 15th Avenue
Phoenix AZ 85007

Mr. Gerald R. Zimmerman
Executive Director
Colorado River Board of
California
770 Fairmont Avenue,
Suite 100
Glendale CA 91203-1035

Mr. Jack L. Stonehocker
Director
Colorado River Commission of Nevada
State Mail Room Complex
Las Vegas NV 89158

It is not our intent to encourage comments on the proposed regulations at this time. Water users and other interested parties will have a 60-day period to review and comment on the regulations after they are published as proposed regulations in the *Federal Register*. At present, we estimate the proposed regulations will be published in November 1991. Following publication in the *Federal Register*, we will respond to specific comments and will likely hold a series of public meetings to accept input from water users, state agencies, and other interested parties. At the close of the public comment period, comments will be evaluated and Reclamation will publish in

the *Federal Register* a synopsis of the issues that were raised and Reclamation's responses.

If there are questions on the process of developing the proposed regulations please contact Mr. Dale Ensminger, of this office, Attention: LC-449.

ROBERT J. TOWLES

Enclosure

Mrs. Elizabeth A. Rieke
Director
Arizona Department of
Water Resources
15 South 15th Avenue
Phoenix AZ 85007

Mr. Gerald R. Zimmerman
Executive Director
Colorado River Board of
California
770 Fairmont Avenue,
Suite 100
Glendale CA 91203-1035

Mr. Jack L. Stonehocker
Director
Colorado River Commis-
sion of Nevada
State Mail Room Complex
Las Vegas NV 89158

(w/o cy of encl and w/cy of mailing list to ea)

PART 415 — REGULATIONS FOR ADMINISTERING ENTITLEMENTS TO COLORADO RIVER WATER IN THE LOWER COLORADO RIVER BASIN

Subpart A — General Provisions

Sec.

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415.3 Authority.
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415.5 Determination of composition of Colorado River water.
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415.8 Procedures for obtaining contracts for use of Colorado River water in the Lower Basin States and for transferring entitlements.
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415.11 Delivery of unused apportionment and surplus water.
415.12 Water delivery and measurement.
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Subpart A — General Provisions

§ 415.1 *Purpose.*

The Boulder Canyon Project Act and the 1964 Supreme Court Decree in *Arizona* v. *California* provide the Secre-

tary of the Interior (Secretary) with the authority and responsibility to manage the mainstream of the Colorado River and to administer entitlements to the use of water therefrom within the Lower Colorado River Basin. These regulations establish criteria, consistent with applicable Federal law, which the Secretary will follow in administering entitlements to, and water users will comply with in utilizing, water from the mainstream of the Colorado River water within the Lower Colorado River Basin. These regulations will apply to the administration of all entitlements to Colorado River water, regardless of how such entitlements were or are obtained. Except for Indian holders of Federal Establishments' Present Perfected Rights (herein defined), entitlements to Colorado River water are available to the water users only under contract with the Secretary.

§ 415.2 *Applicability.*

These regulations apply to all users of surface and subsurface Colorado River water within the Lower Colorado River Basin except as otherwise specifically provided herein.

§ 415.3 *Authority.*

These regulations are promulgated pursuant to the authority vested in the Secretary by the Congress in the Reclamation Act of June 17, 1902 (32 Stat. 388, 43 U.S.C. 391), as amended and supplemented; the Colorado River Front Work and Levee System Adjacent to Yuma Project Act of March 3, 1925 (Pub. L. 79-469, 43 Stat. 1186, 1198), as amended and supplemented; the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057, 43 U.S.C. 617), as amended and supplemented; the Reclamation Project Act of August 4, 1939 (53 Stat. 1187, 43 U.S.C. 485); the Administrative Procedure Act of September 6, 1966 (60 Stat. 237, 5 U.S.C. 552), as amended and supplemented; the Reclamation Reform Act of October 12, 1982 (96 Stat. 1261, 43 U.S.C. 390); and the Supreme Court opinion rendered June 3, 1963 (373 U.S. 546), and Decree entered March 9, 1964 (376 U.S. 340), in *Arizona* v. *California et al.,* as supplemented.

§ 415.4 *Definitions.*

The following definitions, listed alphabetically, apply to these regulations:

(a) "Agricultural use" means the use of mainstream water for the commercial production of agricultural crops or livestock, including use of water for other purposes incidental thereto, on tracts of land operated in units of more than 5 acres, unless contracts adopted prior to the effective date of these rules specifically provide to the

contrary, in which case the contract definition shall prevail for the agricultural use of Colorado River water.

(b) "Annual Operating Plan" or "AOP" means the projected annual plan of operation prepared in accordance with the criteria for coordinated long-range operation of Colorado River reservoirs pursuant to section 602 of the Colorado River Basin Project Act of September 30, 1968, and adopted by the Secretary for operating the Colorado River System during the 12-month period from October 1 through the following September 30.

(c) "Apportionment" means both the amount of Colorado River water available for beneficial consumptive use within a calendar year in the Lower Colorado River Basin and the division of Colorado River water among the three Lower Basin States. Such apportionment may vary depending upon whether the Secretary, in accordance with the Decree and the criteria for the AOP, has determined the existence of a "normal," "shortage," or "surplus" condition. A "normal" condition means that 7.5 million acre-feet (maf) of Colorado River water is available for consumptive use within the calendar year. A "shortage" condition means that less than 7.5 maf is available for consumptive use within the calendar year and a "surplus" condition means that more than 7.5 maf is available for consumptive use within the calendar year.

(d) "Assignment" means the conveyance of an entitlement to Colorado river water from one entitlement holder to another for the same purposes as, and at the same locations where, the entitlement was used prior to the assignment.

(e) "Basic apportionment" means the water available under the determination of a "normal" condition by the Secretary. Under a determination of a "normal" condition, the annual apportionment is 2.8 maf for Arizona; 4.4

maf for California; and 0.3 maf for Nevada, which is a total of 7.5 maf for the Lower Basin.

(f) "Beneficial consumptive use" means consumptive use of water for purposes allowed under State law in each of the respective Lower Basin States and/or for purposes which may be determined by the Regional Director.

(g) "Colorado River System" means that portion of the Colorado River and its tributaries, including both surface and subsurface flow, within the boundaries of the United States of America.

(h) "Colorado River water" means mainstream water, as defined in § 415.4(x).

(i) "Commissioner" means the Commissioner of the Bureau of Reclamation of the United States Department of the Interior.

(j) "Consumptive use" means both diversions from the mainstream, as defined in § 415.4(n), including diversions by underground pumping, less such return flow thereto as is available for consumptive use in the United States or in satisfaction of the Mexican Treaty Obligation, and evaporative losses from the mainstream resulting from actions taken subsequent to March 9, 1964 (the date of the Supreme Court Decree in *Arizona* v. *California*), by individuals or entities which result in a net increase in the mainstream surface area.

(k) "Decree" means the Decree entered March 9, 1964, by the United States Supreme Court in *Arizona* v. *California*, as supplemented or amended, which establishes certain decreed water rights within the Lower Colorado River Basin and recognizes the authority of the Secretary to allocate, contract for, and administer water entitlements in the Lower Basin.

(l) "Department" means the United States Department of the Interior.

(m) "Diversions" means waters diverted by gravity or pumped from the mainstream of the Colorado River, including water diverted from reservoirs or from aquifers fed by the Colorado River.

(n) "Domestic use" means the use of mainstream water for household, stock, municipal, mining, milling, industrial, and other like purposes but excludes hydroelectric power generation.

(o) "Entitlement" means a right to divert and beneficially consume Colorado River water pursuant to contract with the Secretary in compliance with Article II(B)(5) of the Decree. This includes all present perfected rights except those for Federal establishments. Reservations of mainstream water for use by Federal establishments are also entitlements but, in accordance with Article II(D) of the Decree, Federal establishments are subject neither to the requirement for a contract with the Secretary nor the requirement that water must be put to beneficial consumptive use.

(p) "Federal establishment" means a Federal entity identified by Article II(D) of the Decree or otherwise recognized by the Secretary as eligible for beneficial use of Colorado River water.

(q) "Federal Establishments' PPR" means perfected rights for Federal entities as defined by Article II(D) of the Decree.

(r) "Floodplain" generally means the alluvium that extends laterally from the water surface of the Colorado River to the toe of the adjacent terraces. Specific boundaries of the floodplain are defined by the regulatory surface maps.

(s) "Limitrophe section" means that portion of the Colorado River between the Northerly International Boundary and the Southerly International Boundary which delineates the border between the United States and Mexico.

(t) "Lower Basin States" means the States of Arizona, California, and Nevada.

(u) "Lower Colorado River Basin" or "Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico, and Utah within and from which waters naturally drain into the Colorado River below Lee Ferry and also parts of those States located outside the drainage area which are or shall hereafter be beneficially served by waters diverted from the Colorado River below Lee Ferry. The term "Lower Basin" as thus defined is different from the term "Lower Basin States."

(v) "Main stem" means the main channel of the Colorado River exclusive of tributaries.

(w) "Mainstream" means the main stem of the Colorado River downstream from Lee Ferry within the United States, including the reservoirs thereon and the regulatory surface.

(x) "Mainstream water" means water in the main stem of the Colorado River downstream from Lee Ferry within the United States, including the reservoirs and backwaters thereon and the subsurface flow associated therewith, as determined by the Regional Director.

(y) "Mexican Treaty obligation" means the United States obligation under the Mexican Water Treaty between Mexico and the United States, effective November 8, 1945, as supplemented, and obligations associated with Minutes of the International Boundary and Water Commission adopted relevant to said treaty.

(z) "Northerly International Boundary" or "NIB" means that portion of the boundary between Mexico and the United States that is delineated by the border between Mexico and the State of California that extends westerly from the Colorado River.

(aa) "Perfected right" means a water right acquired in accordance with State law, which right has been exercised by the actual diversion of a specific quantity of water that has been applied to a defined area of land or to definite municipal or industrial works and, in addition, shall include water rights created by the reservation of mainstream water for the use of Federal establishments under Federal law whether or not the water has been applied to beneficial use.

(bb) "Permanent service" means either the water user's perpetual right to receive (1) water in amounts sufficient to satisfy the reasonable beneficial use requirements of the water user's service area for the purposes specified in a contract or (2) the maximum annual water delivery entitlement, whichever is the lesser. A water user's maximum water delivery entitlement may be adjusted due to nonbeneficial use or nonuse, as provided in § 415.10. The term "permanent service" as used in the Boulder Canyon Project Act is defined to mean the continued reasonable and beneficial consumptive use of Colorado River water within the water user's service area for the type of use identified in a contract. It does not mean that the user has a perpetual right to receive water if the water has not been put to beneficial use.

(cc) "Present perfected right" or "PPR" means perfected rights defined by the Decree, existing as of June 25, 1929, the effective date of the Boulder Canyon Project Act. All present perfected rights are listed in the supplemental Decree entered January 9, 1979, by the

United States Supreme Court in *Arizona* v. *California et al.*, as amended or supplemented.

(dd) "Reclamation" means the Bureau of Reclamation of the United States Department of the Interior.

(ee) "Regional Director" means the Regional Director, Lower Colorado Region, Bureau of Reclamation, and shall include duly appointed successors and authorized representatives.

(ff) "Regulatory surface" means the definition set forth in § 415.5(e)(1).

(gg) "Regulatory surface maps" mean the maps developed by Reclamation that delineate the Colorado River floodplain and the regulatory surface as defined in § 415.5(e)(1). Reclamation will make said maps available for review or purchase at Reclamation's Regional Office in Boulder City, Nevada and the Yuma Projects Office near Yuma, Arizona.

(hh) "Returns" or "return flow" means water diverted from the mainstream which later flows back to the mainstream and is available for consumptive use in the United States or in satisfaction of the Mexican Treaty obligation.

(ii) "Secretary" means the Secretary of the Interior and his duly authorized representatives. All correspondence and communication with the United States on matters related to the Secretary's role under these regulations should be directed to the Regional Director as the Secretary's authorized representative.

(jj) "Seven Party Agreement" means the agreement dated August 18, 1931, among Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley Water District, The Metropolitan Water District of Southern California, City of Los Angeles, City of San Diego, and the County of San Diego which establishes,

except for holders of PPRs or Federal Establishments' PPRs, apportionments of and priorities to Colorado River water for use among the named parties in California and the Yuma Project of the United States within California.

(kk) "Small user" means a user as defined in § 415.12(b)(2).

(ll) "Southerly International Boundary" means that portion of the boundary between the United States and Mexico that is delineated by the border between Mexico and the State of Arizona that extends southeasterly from the Colorado River.

(mm) "Subsurface water" means water beneath the land surface.

(nn) "Surface water" means water at or above the land surface.

(oo) "Surplus water" means mainstream water determined by the Secretary to be available for release to satisfy annual consumptive use in excess of 7.5 maf.

(pp) "Transfer" means a temporary or permanent change in the type or place of use of an entitlement.

(qq) "Tributaries" mean all stream systems the waters of which naturally drain into the mainstream of the Colorado River below Lee Ferry.

(rr) "Unauthorized use" means any use of Colorado River water not authorized either under the Decree or a contract with the Secretary.

(ss) "Unauthorized user" means any person or entity, except for a holder of a Federal Establishments' PPR, which is diverting mainstream water, including underground diversions, or is otherwise consumptively using mainstream water without a contract with the Secretary or in violation of the Decree.

(tt) "Unused apportionment" means Colorado River water within a Lower Basin State's apportionment which cannot be put to beneficial consumptive use within that State and is released by the Secretary for consumptive use among the other Lower Basin States during that year in accordance with the order of priority set forth in § 415.11(a).

(uu) "Waste" means Colorado River water which cannot be put to beneficial consumptive use by the means listed in § 415.13(f)(1), including but not limited to water scheduled but not diverted.

Subpart B — Regulations to Establish and Regulate Entitlements to Colorado River Water in the Lower Colorado River Basin

§ 415.5 *Determination of composition of Colorado River water.*

(a) *Purpose and authority.* This section defines the boundaries of the mainstream and establishes criteria for determining who is using Colorado River water. These regulations are promulgated to assist in the enforcement of the terms of the Decree by prohibiting the use of water obtained from the Colorado River, including water withdrawn by underground pumping, unless such use is in accordance with the Decree and recognized by the Regional Director.

(b) *Hydrologic continuity between surface water and subsurface water.* In accordance with Article I(C) of the Decree, these regulations recognize the hydrologic continuity between surface and subsurface flows along the mainstream within the Lower Colorado River Basin.

(c) *Surface portion of mainstream.* The surface portion of the mainstream includes all water in the river and all water in the reservoirs, lakes, and ponds on the river,

adjacent to the river, or directly connected with the river by surface or subsurface means. Surface water in water courses tributary to the river becomes part of the mainstream at and downstream of the point where the tributary water commingles with water in the river or with water in reservoirs, lakes, and ponds on the river, directly connected with the river, or adjacent to the river by surface or subsurface means.

(d) *Subsurface portion of mainstream.* The subsurface portion of the mainstream is the water beneath the adjacent land surface elevations of the floodplain and the regulatory surface of the Colorado River. The regulatory surface maps delineate the Colorado River floodplain and the regulatory surface. Subsurface water which is tributary to the subsurface portion of the mainstream becomes part of the mainstream at the point where the tributary subsurface water commingles with the subsurface flow beneath the floodplain of the Colorado River.

(e) *Presumption of underground diversion from the Colorado River.* All water pumped from wells in the Colorado River floodplain is presumed to be Colorado River water. For the purposes of these regulations, water pumped from wells that is a mixture of water from the Colorado River and local recharge or other sources is considered commingled water, and thus Colorado River water. Water pumped from a well outside the Colorado River floodplain may be Colorado River water if the well is located within the regulatory surface area. Areas adjacent to the limitrophe section that do not naturally drain or return water to the Colorado River above the NIB are not subject to these regulations. Reclamation will follow the criteria described below to determine if the water pumped from a well is Colorado River water.

(1) *The regulatory surface.* The regulatory surface represents a surface below which water pumped from

wells is deemed to be Colorado River water. The regulatory surface as determined by the Regional Director extends downstream from Lee Ferry to below the NIB and laterally away from the floodplain to an identifiable geologic or hydrologic barrier to subsurface flow that extends above the regulatory surface. Such a barrier is a geologic feature such as rock or other low-permeable boundary or a zone of very poor permeability where more hydraulic head than is physicially or practically possible would be required to move significant volumes of water across the barrier.

(i) The regulatory surface in areas adjacent to Lake Mead will consist of two parts:

A. A fixed elevation which will define a potential to divert Colorado River water at any likely water surface of Lake Mead under normal operations. The fixed elevation will be the top of the fixed spillway crest of Hoover Dam (1,205.4 feet mean sea level elevation); and

B. The elevation at or below which a well would be considered to actually divert Colorado River water. This elevation will be determined by the Regional Director based on the high water surface of Lake Mead for the year and will be reevaluated annually by the Regional Director.

A well within the regulatory surface area and drilled below the elevation described in paragraph (e)(1)(i)A of this section will be deemed to be a potential diverter of Colorado River water and the user will be required to have a contract with the Secretary.

(ii) In areas dominated by Lakes Mohave and Havasu, the highest daily average lake elevations which occur during the calendar year will be used to determine the regulatory surface in the areas adjacent to said lakes. The high water target surface elevations used to operate these

reservoirs are 645 feet for Lake Mohave and 449.6 feet for Lake Havasu.

(iii) In other areas, the regulatory surface will be determined from groundwater levels at the edge of the floodplain away from the river.

(2) *Water levels in wells used as a water supply.* The elevation of the water levels measured in wells used as a water supply will be used to determine if the source of water to these wells is from below the regulatory surface elevation at the location of a well, and thus presumed to be the Colorado River. The measurement required will be the static water level (the stabilized water level in a well that is not pumping water).

(i) The Colorado River is presumed not to be the source of water to a well if the static water level measured in that well is above the regulatory surface elevation at the location of that well.

(ii) The Colorado River is presumed to be the source of water to a well if the static water level measured in that well is equal to or below the regulatory surface elevation at the location of the well.

(iii) The Colorado River is presumed to be the source of water to a well if the static water level measured in that well is above the regulatory surface elevation and the pumping water level measured in that same well is below the regulatory surface elevation at the location of the well. Such a well is presumed to be pumping commingled water and thus, by definition, Colorado River water.

(iv) In making the determinations under paragraphs (e)(2)(i) through (e)(2)(iii) of this section, two types of measurements may be required:

(A) Static water level — the stabilized water level in a well that is not pumping water; and

(B) Pumping water level — the stabilized water level in a well that is pumping water, or the static water level less the stabilized drawdown in the well.

If an employee, agent, or contractor of Reclamation is denied access to a well to make the required measurements, that well will be presumed to be pumping Colorado River water.

(f) *Accounting for water use.* All users must: (1) except, for small users as defined in § 415.12(b)(2), install a measurement device acceptable to the Regional Director as provided for in § 415.12(b)(3), (2) account for the diversion and/or consumptive use, as well as surface return flow, of all water from the Colorado River, and (3) keep a record of and report such use to the Regional Director. Reclamation shall provide or maintain and make available records of such use in accordance with Article V of the Decree.

(g) *Determination of unauthorized water use.* Any entity using Colorado River water without a contract entitlement from the Regional Director (except in the case of a Federal Establishments' PPR) has no legal right to divert water and is an unauthorized user. Any entity using Colorado River water for purposes not authorized under the Decree or a contract with the Regional Director is making unauthorized use of such water. An entity which is determined by the Regional Director to be either an unauthorized user or making an unauthorized use of Colorado River water may attempt to obtain an allocation of water and a contract entitlement pursuant to § 415.8. If such an entitlement is not obtained, the Regional Director shall proceed in accordance with § 415.22 in order to stop diversions by unauthorized users or for unauthorized uses.

§ 415.6 *Beneficial Use of Entitlements.*

(a) *Purpose.* The regulations in this section are intended to address beneficial use and nonuse of entitlements to Colorado River water in the Lower Colorado River basin.

(b) *Beneficial use.* The diversion and consumptive use of Colorado River water, except by Federal establishments, must be for beneficial uses only.

(c) *Nonuse of entitlements.* Nonuse, nonbeneficial use, nonreporting of use, and unauthorized use are hereinafter referred to singly or collectively as nonuse.

(1) The Regional Director will consult with the appropriate authorities within the States of California, Arizona, or Nevada in determining whether or not a user of Colorado River water is applying that water to beneficial use within that respective State and pursuant to that State's laws. If a State authority, in accordance with established State law procedures, determines that a user of Colorado River water (other than a Federal Establishments' PPR user) has not been applying water to a beneficial use, that determination may be respected by the Regional Director for enforcement purposes.

(2) The Regional Director, independent of State authorities, may also make beneficial use determinations for all Colorado River water users when he deems it appropriate. In determining whether a use is beneficial or nonbeneficial, the Regional Director generally will be guided by the laws of the State where the use occurs. The Regional Director may recognize beneficial uses not recognized under State law.

(3) Upon preliminary determination by the Regional Director or (except for a Federal establishment) the appropriate State authority that nonuse has occurred, a

Colorado River water user may be subject to a reduction or elimination of entitlement as provided in § 415.10.

§ 415.7 *Written contract or agreement requirements.*

(a) *No service without a contract with the Regional Director.* Except for holders of Federal Establishments' PPRs, no entity shall divert or use Colorado River water except by contract with the Regional Director. Except for specific contracts for surplus water or unused apportionment that are referenced in paragraph (b)(5) of this section, such contracts are for permanent service as required by section 5 of the Boulder Canyon Project Act. Holders of Federal Establishments' PPRs are encouraged to enter into written water service agreements with the Regional Director.

(b) *Types of agreements.* The Regional Director shall utilize the following agreements in establishing or administering entitlements to use of Colorado River water:

(1) *Intra-agency agreements.* An intra-agency agreement is a written agreement between Reclamation and another Federal agency within the Department of the Interior that receives water service.

(2) *Interagency agreements.* An interagency agreement is a written agreement between Reclamation and another Federal agency outside the Department of the Interior that receives water service.

(3) *Agreements with Indian holders of Federal Establishments' PPRs.* In accordance with Article II(D) of the Decree, agreements with Indian holders of Federal Establishments' PPRs will not be required. However, Reclamation strongly recommends a written agreement with each Indian holder of a Federal Establishments' PPR to recognize the amount, nature, and priority of the entitlement and to establish the terms and conditions thereof, including, but not limited to: the beneficial consumptive use entitlement associated with the right, the type and place of use, measuring and reporting requirements, ad-

ministrative fees, criteria for changes in the type or place of use, and other responsibilities of the parties as deemed to be appropriate by the Regional Director.

(4) *PPR contracts with non-Indian holders of PPRs.* Contracts with non-Indian holders of PPRs are required. Such contracts will be between the Regional Director and the individual or entity holding the PPR and shall recognize the amount, nature, and priority of the right and establish the terms and conditions thereof, including, but not limited to: the beneficial consumptive use entitlement associated with the right, the type and place of use, measuring and reporting requirements, criteria for changes in type and place of use, criteria for forfeiture or reduction of the right for failure to put the right to beneficial use or to properly report such use, administrative fees, and other responsibilities of the parties as deemed to be appropriate by the Regional Director.

(5) *Water delivery contracts.* Water delivery contracts are written agreements between Reclamation and a non-Federal entity that provide permanent service on a basis other than a PPR and which establish, among other things: the amount of the contractual entitlement, the type and place of use, criteria for establishing the amount of the annual delivery entitlement during times when Colorado River water supplies are insufficient to fully satisfy all entitlements, the amount of the charges and fees associated with the delivery of water and administration of the contract and for adjustment thereof, measuring and reporting requirements, a requirement for approval of assignments or transfers and inclusions and exclusions of land in and from a water user's service area before such actions are effective, criteria for forfeiture of or reduction in the contractual entitlement because of failure to put the water to beneficial use, failure to report

usage, or failure to pay all charges and fees when due, and other provisions as deemed to be appropriate by the Regional Director.

(6) *Surplus contracts.* Contracts for Colorado River water may include unused basic apportionment or surplus apportionment when available, or the Secretary may enter into single-purpose contracts for surplus water or unused apportionment, which may be made available to users on an intermittent basis at the discretion of the Regional Director pursuant to a recommendation from appropriate State officials. Surplus contracts will provide water to users on an as-available basis as determined by the Secretary. Surplus contracts shall establish, among other things: the amount of the contractual entitlement, the type and place of use, criteria for establishing the amount of the delivery entitlement, provisions for curtailment of and adjustments to the contractual entitlement, the amount of the charges and fees associated with the delivery of water and administration of the contract, measuring and reporting requirements, a requirement for approval of assignments or transfers and inclusions in and exclusions of land from a water user's service area before such actions are effective, failure to report usage or to pay all charges and fees when due, and other provisions as deemed to be appropriate by the Regional Director. Sources of water available to satisfy demands under surplus contracts include:

(i) Unused basic apportionment, which is comprised of Colorado River water determined by the Secretary to be available and which is not being fully utilized under the various Lower Basin States' basic and/or surplus apportionments;

(ii) Surplus apportionment, which is comprised of Colorado River water available for consumptive use in excess

of the 7.5 maf Lower Basin States' basic apportionment; and

(iii) Waste, which is Colorado River water that cannot be put to consumptive use by the means listed in § 415.13(f)(1). An entity willing and able to take delivery of waste may apply to the Regional Director for a contract for the use of said water. Such contracts shall be awarded on a first-come-first-served basis and in accordance with such terms as the Regional Director deems advisable.

§ 415.8 *Procedures for obtaining contracts for use of Colorado River water in the Lower Basin States and for transferring entitlements.*

(a) *New contracts.* An entity which does not have a contract and is not a Federal establishment may obtain an entitlement to use Colorado River water if (i) the Regional Director has determined that the water to be supplied pursuant to the contract is available under the Boulder Canyon Project Act and the Decree, (ii) the appropriate State authority has been consulted and given an opportunity to comment, and (iii) the Regional Director approves an entitlement and enters into a contract with the entity.

An entity with a PPR that does not have a contract with the United States should apply directly to the Regional Director for a contract pursuant to section 5 of the Boulder Canyon Project Act and Article II (B)(5) of the Decree.

(b) *Qualifying requirements.* An entity desiring to obtain an entitlement to Colorado River water and enter into a contract with the Regional Director to receive said water must comply with the following requirements:

(1) Establish that the proposed use of water is a beneficial use;

(2) Identify the amount of water needed;

(3) Identify acceptable point(s) and means of diversion and metering;

(4) Identify acceptable point(s) and means of return and metering;

(5) Submit a development plan containing:

(i) A proposed date to begin construction necessary to put the water to beneficial use,

(ii) An estimate of the time required to complete construction, and

(iii) An estimated date to apply the water to the proposed use and a projected water use buildup schedule, if applicable; and

(6) Comply with the requirements of the National Environmental Policy Act of 1969 (83 Stat 852, 42 U.S.C. 4321), as amended, and other applicable environmental laws and regulations, as forth in § 415.18.

(c) *Assignments of contract entitlements.* Contract entitlements may be assigned from one entity to another, but such assignments of contracts shall not be effective until approved in writing by the Regional Director. In evaluating a request for approval of a proposed assignment, the Regional Director shall consider, among other things, the authority and capability of the assignee to fulfill the contractual obligations. The Regional Director may impose new or additional contractual obligations as conditions of his approval. Transactions which involve a change in ownership and a change in the type or place of use shall require both an approved assignment and approved transfer.

(d) *Transfers of entitlements.*

(1) *General.* Requests for transfers must be approved in writing by the Regional Director. Transfers are permitted only within a State. In considering requests for transfers, the Regional Director shall consider, among other relevant factors: (i) potential impacts on other water users, (ii) applicable law which may facilitate or constrain such transfers, (iii) applicable Departmental, Reclamation, or other Federal regulations, policies, or guidelines in effect at the time of the review, and (iv) appropriate input from authorities of the State within which the transfer is proposed. The parties involved in a transfer shall provide all information that the Regional Director determines to be necessary to evaluate the proposed transfer. A proposed transfer of a PPR not covered by a contract with the Regional Director shall not be considered by the Regional Director unless the execution of a contract is included as part of the transaction. Transfers of Federal establishment entitlements shall not be authorized.

(2) *Transfers limited to historical consumptive use.* The maximum amount of water that may be approved for transfer shall be based upon the average beneficial consumptive use for the previous 5 years. Average beneficial consumptive use shall be determined by the Regional Director, utilizing input from the parties to the transfer and State authorities, and the decision of the Regional Director shall be final. The transferee must meet the test of beneficial use as outlined in § 415.6.

(3) *Mitigation or compensation for third-party impacts.* Transfers will not be approved unless the acquiring entity (transferee) commits in writing to mitigate or compensate for third-party impacts of such transfers to the satisfaction of the Regional Director and impacted

third parties, including, but not limited to, the county of origin of the water user offering the transfer.

(4) *Management of idled lands due to transfer.* In regard to transfers involving water currently used for agricultural production, the Regional Director shall require appropriate contractual commitments which provide for the permanent management of idled lands for purposes including, but not limited to, vegetative management, dust abatement, erosion control, and fire protection. Such commitments may include:

(i) Direct management by the parties to the transfer at their expense, with oversight by the Regional Director; or

(ii) Establishment of a non-revocable interest-bearing escrow account which will provide sufficient annual revenues for the Regional Director to manage the idled lands on a permanent basis.

§ 415.9 *Exchange or temporary sale of water.*

(a) *General.* A Lower Basin States water user may request the Regional Director to approve an exchange with or temporary sale to another Lower Basin States water user within the same State. Requests for exchanges or temporary sales of water, including those by Federal establishments, must be approved in writing by the Regional Director. In considering requests for exchanges or temporary sales, the Regional Director shall consider, among other relevant factors: (i) potential impacts on other water users, (ii) applicable law which may facilitate or constrain such exchanges or temporary sales, (iii) applicable Departmental, Reclamation, or other Federal regulations, policies, or guidelines in effect at the time of the review, and (iv) appropriate input from authorities of the State involved in the proposed exchange or temporary sale. The parties involved in an exchange or

temporary sale shall provide all information that the Regional Director determines to be necessary to evaluate the proposed transaction. A proposed exchange or temporary sale of water associated with a PPR not covered by a contract with the Regional Director shall not be considered by the Regional Director unless the execution of a contract is included as part of the transaction.

(b) *Exchanges and temporary sales based upon historical consumptive use.* The maximum amount of water that may be approved for exchange or temporary sale shall be based upon the average beneficial consumptive use for the previous 5 years. Average beneficial consumptive use shall be determined by the Regional Director, utilizing input from the parties to the exchange or temporary sale and State authorities, and the decision of the Regional Director shall be final. The purchaser in a sale transaction and the parties to an exchange must meet the test of beneficial use as outlined in § 415.6.

(c) *Mitigation or compensation for third-party impacts.* Exchanges or temporary sales will not be approved unless the purchaser and each party to an exchange commits in writing to mitigate or compensate for third-party impacts of such exchanges or temporary sales to the satisfaction of the Regional Director and other impacted parties, including, but not limited to, the county of origin of the water user offering the exchange or temporary sale.

(d) *Coordination with Reclamation.* Reclamation will coordinate a proposed exchange or temporary sale with the appropriate authorities of the State involved in the proposed exchange or temporary sale. Any exchange or temporary sale shall be short-term, which is hereby defined as 1 year or less. Reclamation shall be provided a copy of all exchange or temporary sales agreements.

(e) *Additional factors Reclamation may consider in evaluating requests for exchanges and temporary sales.* In reviewing a request for an exchange or temporary sale, Reclamation may consider, in addition to the factors set forth in paragraphs (a) and (b) of this section, other factors including, but not limited to, the following:

(1) A seller which is an agricultural user must maintain the lands and works in a condition whereby the lands could take and receive water at all times during the period of exchange or temporary sale;

(2) If an exchange or temporary sale is made by an agricultural user to a domestic user during the cost-repayment period for Hoover powerplant, Reclamation shall assess a charge of $0.25 or $0.50 per acre-foot, as appropriate, for the quantity of water exchanged or sold, payable annually; and

(3) Exchange of water may be settled by monetary payment in lieu of return of water. An exchange of water may not include the banking of water in Federal reservoirs for later withdrawal.

§ 415.10 *Reductions in entitlement due to nonuse.*

(a) *Nonuse evaluation factors.* In making a determination of nonuse, the Regional Director, in consultation with appropriate State agencies, will consider relevant facts, circumstances, and conditions that may be unique to each State, consistent with the following guidelines:

(1) The Regional Director shall consider the unique aspects of domestic and agricultural uses of water and allow consideration of future growth in water demands for domestic users;

(2) The Regional Director will ensure that entitlements are not reduced as a result of nonuse brought about by implementation of documented water conservation measures;

(3) If the water user is able to show evidence to the satisfaction of the Regional Director that there will be a need for the entire entitlement within a reasonable time, the Regional Director will consider additional build-up of water use schedules as a basis for retaining entitlement to sufficient Colorado River water for the user's growth for a period of years, based upon an average historical growth rate for a like number of years, adjusted for reasonable conservation. The Regional Director will consult with appropriate State agencies in determining the number of years allowed for a build-up schedule and the number of historical years upon which to base such projections. The Regional Director, in consultation with appropriate State agencies, will review this projection every 5 years and make a new determination of need;

(4) The greatest quantity of Colorado River water entitlement put to reasonable beneficial use, as reported by the water user over the previous 5 years, adjusted by the Regional Director if necessary for metering errors or

other reasons, shall be considered to be the base use of the entitlement for that period;

(5) The Regional Director may consider any Federal or State statutory authority for the allowance of nonuse;

(6) For municipal contract users, the Regional Director may take into account factors including, but not limited to, current population, growth rate, market and economic fluctuations, current water use per capita and projected use per capita, current industrial use, documented and anticipated future needs, other uses of water, the amount and sources of other water, and any other factors deemed to be relevant to the municipality's actual need for the Colorado River water; and

(7) For agricultural contract users, the Regional Director may take into account factors including, but not limited to, irrigable acres and acres irrigated, cropping patterns, return flow rates, diversions, evapotranspiration rates, irrigation efficiency, and type and condition of irrigation systems utilized.

(b) *Determination of nonuse and reduction of entitlement.* Upon a preliminary determination by the Regional Director that a 5-year period of nonuse has occurred, the procedures set forth in § 415.22 shall be followed. Upon a final determination of nonuse by the Regional Director (which determination shall take into account, if applicable, the hearing examiner's recommended findings of fact and conclusions of law), the Regional Director shall issue to the user, as appropriate, a cease and desist order or an order reducing the user's entitlement. Any such order issued pursuant to § 415.22 will specify the amount of the reduction. If the user disagrees with the Regional Director's determination of nonuse or the amount of the reduction, the user may appeal the decision to the Commissioner pursuant to § 415.22(f). If the Regional

Director's determination of nonuse is not rescinded as a result of a successful appeal pursuant to § 415.22, the Regional Director will provide a contract amendment to the user for execution which shall reflect the reduced entitlement. If the user refuses to properly execute the contract amendment, the Regional Director may administratively reduce the user's contract entitlement and the user thereafter will be entitled to divert no more water than is allowed under the reduced entitlement.

(c) *Disposition of recaptured entitlement.* An entitlement to Colorado River water made available as a result of a reduction because of a finding of nonuse will be made available to other water user(s) within the appropriate State, as determined by the Secretary.

(d) *Five-year review of water utilization.* The water use of each water user may be reviewed by the Regional Director at 5-year intervals to verify that water is being used in accordance with terms of the contract. Use not in accordance with the terms of the contract or these regulations may result in an adjustment of the water user's Colorado River water entitlement.

Subpart C — General Management Regulations

§ 415.11 *Delivery of unused apportionment and surplus water.*

(a) *Unused apportionment.* Unused apportionment within a Lower Basin State may be released, pursuant to the authority of the Secretary, for consumptive use during that year among the other Lower Basin States in accordance with Article II(B)(6) of the Decree. When there is insufficient unused apportionment to satisy all the demands for water within the Lower Basin and no surplus water is available, unused apportionment will be available for use among the Lower Basin States in accordance with the following principles:

(1) The water first will be made available for reasonable beneficial use by water users with surplus contracts in those States where the basic apportionment is still unused;

(2) Any remaining unused apportionment will be apportioned among the Lower Basin States in proportion to their basic apportionments (i.e., 2.8 maf for Arizona, 4.4 maf for California, and 0.3 maf for Nevada);

(3) If any Lower Basin State's share that is made available pursuant to paragraph (a)(2) of this section is not fully utilized, the Regional Director may allocate the unused portion to another Lower Basin State which has the need;

(4) In California, unused apportionment will be made available first in accordance with the water use priorities established in the Seven Party Agreement. After all priorities under the Seven Party Agreement (including the Yuma Project of the United States) and any reservation of water by the United States pursuant to Article II(D) of the Decree are fully satisfied, any remaining water will be assigned among the remaining holders of

surplus contracts in consultation with the Colorado River Board of California; and

(5) In Arizona and Nevada, water will be assigned among water users in consultation with the appropriate State authority.

(b) *Surplus water.* Surplus water will be made available from time to time when the Secretary determines that sufficient mainstream water is available for release to satisfy annual consumptive use in excess of 7.5 maf. Allocation of surplus water among the three Lower Basin States will be accomplished in accordance with Article II(B)(2) of the Decree, which provides that water available for annual consumptive use in excess of 7.5 maf shall be apportioned as follows: 50 percent for use in California, 46 percent for use in Arizona, and 4 percent for use in Nevada. In years when the amount of surplus water available for reasonable beneficial use is insufficient to meet all demands, the water will be allocated among the users according to the principles outlined in paragraph (a) of this section.

(c) *Waste.* Colorado River water which cannot be put to beneficial consumptive use by the means listed in § 415.13(f)(1), including but not limited to water ordered but not diverted, is "waste." Use of waste normally shall not be charged against any State's apportionment or any entity's entitlement to Colorado River water. However, the Regional Director has the discretion to charge waste against the entitlement of an entity that habitually causes water to be wasted.

§ 415.12 *Water delivery and measurement.*

(a) *Approval of diversion and return points.* The place and method for diversion from and return of surface water to the Colorado River are subject to approval by the Regional Director. Approval shall be based upon informa-

tion submitted in accordance with § 415.8(b). The Regional Director will request pertinent information needed to evaluate the requests for approval for all water users whose diversion and surface return points have not been approved. A water user will have 30 days upon receipt of the request from the Regional Director to provide the information.

(b) *Measurement of water.*

(1) *Measurement of diversions and return flows.* All water users, except small users as defined below, are required to measure, or provide for the measurement of, all diversions and surface return flows. Measurement shall be at points of diversion or return or other places approved by the Regional Director.

(2) *Measurement of system deliveries and spills.* All water users, except small users and unless otherwise exempted by the Regional Director, are required to measure, or provide for the measurement of, all system deliveries and spills. If a water user diverting water from the Colorado River, including by underground pumping, is considered a small user, the diversion may be estimated by the water user, rather than measured, by employing appropriate engineering methods that are approved in writing by the Regional Director in advance. A small user is defined as a single-family household with annual usage equal to or less than one acre-foot whose water is used for neither commercial nor industrial purposes and who does not receive water from a public water supply. A public water supply is defined as a water supply from a single diverter or entity that meets the needs of four or more households. For the purposes of these regulations, recreational vehicle hookups will be treated as households.

(3) *Approval of measuring devices and methods.* Methods and devices for measurement of water are

subject to written approval by the Regional Director. A water user is required to make its request for approval of such methods and devices in writing to the Regional Director. The request shall describe the meters, devices, or methods for measurement and shall include the make, model number, and applicable technical data. The measuring devices shall be installed and maintained in a manner satisfactory to the Regional Director at the water user's expense. Reclamation shall be given the right of access to inspect and check the accuracy of the measuring devices at any time. If it is found that the measuring devices have not been installed or are inaccurate, the Regional Director shall require the water user to take corrective action within a specified time period. If a water user fails to comply, the Regional Director may take corrective action at the water user's expense. The Regional Director shall determine the amount of diversion or surface return flow from the best information available for the period of time during which the erroneous measurements occurred. The Regional Director's determination shall be final.

§ 415.13 *Water operations and accounting.*

(a) *River operation purposes.* Consistent with the AOP, river operations are monitored and modified as required during the year to reflect changing conditions, taking into account the use of reservoirs for all purposes including flood control, river regulation, beneficial consumptive uses, hydroelectric power production, enhancement of fish and wildlife, navigation, and recreation.

(b) *Water scheduling.*

(1) *Annual diversion requirements and surface returns.* The Regional Director may require entitlement holders to annually furnish Reclamation, by October 15th or as otherwise directed, a schedule of estimated diversion requirements and surface returns by month for the

following calendar year. Reclamation will review these estimates pursuant to the procedures established in 43 CFR Part 417. Alternatively, the Regional Director may, if he deems it appropriate, notify water users of the amount of water available for their use during the following calendar year and request their schedules of deliveries and returns by month for that year. Any changes to approved schedules during the year shall be provided to Reclamation in writing as soon as possible for further review and approval.

(2) *Weekly orders.* For water taken below Parker Dam, water users shall, if requested, furnish to Reclamation a schedule of daily diversions for the week Monday through Sunday, no later than 1:30 p.m. on Wednesday of the preceding week. Requested changes in a daily diversion shall be provided to Reclamation by 1:30 p.m. on the same day for water diverted between Parker and Headgate Rock Dams; by 1:30 p.m. of the preceding day for water diverted between Headgate Rock and Palo Verde Diversion Dams; and by 1:30 p.m. of the third preceding day for water diverted below Palo Verde Diversion Dam. All times are mountain standard time.

(c) *Overruns or underruns.* Unintentional individual entity or State apportionment overruns or underruns could result from various factors, including but not limited to:

(1) Lack of knowledge of total consumptive use and remaining water availability for a given year due to lags in reporting by a State or water user of accurate and complete information on total diversions and return flows;

(2) Unscheduled outages in diversion and delivery facilities late in the year due to unforeseen conditions such as damage by earthquakes;

(3) Errors in measurement of diversions and return flow;

(4) Unpredicted changes in weather conditions;

(5) Changes in economic conditions or agricultural policies; and

(6) Errors in forecasted water use.

(d) *Adjustments for overruns or underruns.* Adjustments to the individual user's allocation or a State's apportionment to offset overruns will be required. Adjustments to account for overruns will be required in the year following the publication of final Decree accounting records. The Regional Director may require water use schedules for the remainder of the year of publication to be adjusted to attempt to ensure that total water use for that year stays within annual water allotments less previous overruns. In addition, all water users shall closely scrutinize water use throughout the year to enable such adjustments to be made concurrently as necessary to prevent or minimize over-deliveries by the end of the year. Underruns will be deemed to be retained in storage and shall become part of the future water supply available to the Lower Basin States.

(e) *Repetitive overruns.* Overruns for two consecutive years may indicate that a water user is not making progress in reducing diversions to make up for previous overruns, and the Regional Director may review and modify the user's weekly orders as provided in § 415.20(e).

(f) *Water ordered but not diverted.* To the extent possible, water ordered but not diverted by the entity scheduling the water will be used for the following purposes:

(1) First,

(i) Delivered to other water users in satisfaction of their entitlements; and/or

(ii) Delivered to Mexico in satisfaction of the Mexican Treaty obligation; and/or

(iii) Routed to storage for future delivery to entitlement holders;

(2) Second, applied to activities necessary for river regulation, e.g., activities to assure satisfaction of delivery needs and other beneficial purposes such as sluicing to remove sediment or releases to improve river channel conditions downstream if the water cannot be salvaged;

(3) Third, made available for beneficial consumptive use, where possible, without charge against a State's apportionment or a user's entitlement; and

(4) Last, utilized to provide flows in the river below Imperial Dam or to generate power where salvage is not possible and river regulation purposes are satisfied.

(g) *Reduction in deliveries due to excess flows to Mexico.* In maintaining records in accordance with Article V of the Decree, the Regional Director will retain for each entity records of water that cannot be applied to beneficial use pursuant to paragraph (f)(1) of this section and which flows to Mexico in excess of the Mexican Treaty obligation. Such water will be considered in the same category as return flows which are not available for consumptive use in the United States or in satisfaction of the Mexican Treaty obligation. The Regional Director will use these records to assist in identifying entities which consistently order water which is not diverted. The Regional Director may reduce the entity's deliveries in a subsequent year by the amount of excess flow to Mexico that is attributable to the entity. In making this determination, the Regional Director will consider whether the excess delivery to Mexico combined with all uses in the

State for that year would exceed the State's apportionment, the impact of such excess delivery on the water supply available to the Lower Basin States, and the degree of control the entity has over its water. In some cases the entity will be directed to improve its water scheduling techniques, and the Regional Director may impose special requirements on that entity relative to scheduling and use of water that are stricter than those described in these regulations.

§ 415.14 *Water quality.*

The United States does not warrant the quality of water released or delivered pursuant to contract and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water. A user of water from the Colorado River, in diverting, using, and returning water, shall comply with all applicable water pollution laws and regulations of the United States and the State in which the water is used and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

§ 415.15 *Wheeling non-system water.*

(a) *Wheeling requirements.* The Regional Director may consider wheeling non-Colorado River water through the Colorado River if the following conditions are met:

(1) An entity that desires the United States to wheel non-Colorado River water within the Lower Basin shall submit a request to the Regional Director for approval;

(2) The requesting entity (applicant) shall agree to advance funds to the United States to pay all costs incurred by the United States to review the entity's proposal;

(3) Any entity that desires to wheel non-Colorado River water through the Colorado River will be required to enter into a contract with the Regional Director prior to any wheeling of water;

(4) The applicant shall indemnify and hold harmless the United States, its employees and agents, and other water users from any loss or property damage or claims for personal injury, death, or property damage of any nature whatsoever and by whomsoever made arising out of any activities performed under the contract;

(5) The Regional Director must be able to determine that the water to be wheeled could not have reached and that water from the source has never reached the mainstream;

(6) The water received into the Colorado River for wheeling shall at all times be of equal or better quality than that of the mainstream at the point where the non-Colorado River water enters the mainstream;

(7) The applicant must show that wheeling will not adversely impact the rights of other parties;

(8) The applicant must comply with all applicable laws and regulations of Federal, State, and local authorities that have jurisdiction over the location where the water is withdrawn;

(9) Water that is wheeled in the Colorado River, diverted, and subsequently returned to the Colorado River shall be considered Colorado River water and shall not be available for further diversion return flow credit under the wheeling agreement to either the user or the State;

(10) The Regional Director will not warrant the quality of the water delivered to a wheeling contractor;

(11) The applicant shall comply with the requirements set forth in § 415.17, the National Environmental Policy

Act of 1969, as amended, the Endangered Species Act of 1973, as amended, and other applicable environmental laws, regulations, and procedures;

(12) A method or device for measurement of delivered and diverted water that is acceptable to the Regional Director must be in place and approved by the Regional Director prior to any wheeling of water. The places of measurement shall be where the requesting entity's water commingles with mainstream water and at the location, approved by the Regional Director, where the wheeled water is to be withdrawn from the mainstream or at another place approved by the Regional Director;

(13) The non-Colorado River water shall be subject to such conditions as accumulation, retention, release, and withdrawal as the Secretary may prescribe and shall share in Colorado River losses at the same rate established or modified by the Regional Director for Colorado River water losses;

(14) The applicant will receive no credit for energy generation as a result of wheeled water passing through hydroelectric power generation facilities of the United States; and

(15) The applicant will obtain the approval of the State or States from which the water is to be diverted and the State or States through and from which the water is wheeled and withdrawn.

(b) *Priority of use of Colorado River storage and delivery system.* Colorado River water shall have priority over non-Colorado River water in the use of the Colorado River storage and delivery system. When river operations require flood control releases, whether through a hydroelectric power generator or a spillway, non-Colorado River water will be released before Colorado River water is released.

§ 415.16. *Changes in service areas.*

A change in a water user's service area due to inclusions or exclusions or changes in organizational boundaries shall not become effective until approved in writing by the Regional Director. In evaluating requests for approval of such actions, the Regional Director shall consider, among other things, the impact of the action on the ability of the water user to continue to meet its financial obligations to the United States, impacts on third parties and the environment, and applicable statutory requirements under Federal and State law. In addition, the Regional Director shall consider, depending on the type of user, such factors as the following, including, but not limited to:

(a) *Agricultural contractor.* The factors specifically applicable to agricultural users set forth in § 415.10(a)(7). In addition, before a request for inclusion is approved, the lands to be served project water must be irrigable as determined by the Regional Director; and

(b) *Municipal contractor.* The factors specifically applicable to municipal users set forth in § 415.10(a)(6).

§ 415.17 *Water conservation.*

(a) *Reasonable conservation required.* The Reclamation Reform Act of 1982, section 210(b), requires that

> Each district that has entered into a repayment contract or water service contract pursuant to Federal reclamation law or the Water Supply Act of 1958, as amended (43 U.S.C. 390b), shall develop a water conservation plan which shall contain definite goals, appropriate water conservation measures, and a time schedule for meeting the water conservation objectives.

(b) *Consultation with contractors.* 43 CFR Part 417, entitled "Procedural Methods for Implementing Colorado River Water Conservation Measures with Lower Basin Contractors and Others," authorizes the Regional Director to

> conduct such consultations with each Contractor as the Regional Director may deem appropriate as to the making by the Regional Director of annual recommendations relating to water conservation measures and operating practices in the diversion, delivery, distribution and use of Colorado River water, and to the making by the Regional Director of annual determinations of each Contractor's estimated water requirements for the ensuing calendar year to the end that deliveries of Colorado River water to each contractor will not exceed those reasonably required for beneficial use.

(c) *Prevention of waste.* As governed by the principle of beneficial use, the works, systems, methods, and operating procedures employed by water users in the diversion, distribution, delivery, and use of Colorado River water in the Lower Basin shall be reasonably designed

and maintained to prevent waste, unreasonable use, or unreasonable methods of diversion of such waters.

(d) *Water conservation plans.* Water conservation plans shall be required of all water users for use of Colorado River water. Each plan shall contain reasonable and economically feasible goals, measures, and time schedules as required by section 210(b) of the Reclamation Reform Act.

(1) Water users that irrigate less than 2,000 acres and domestic users with diversion entitlements of less than 5,000 acre-feet annually may be exempted from the preparation of a water conservation plan but shall be required to submit annual reports as required herein. Agricultural users annually will be required to submit a description of their methods of irrigation and crop reports, and domestic users will be required to provide information on measured or estimated water system losses.

(2) Water users may submit or designate State-required water conservation plans for approval by the Regional Director to satisfy the requirements of these regulations.

(e) *Updating water conservation plans.* Water conservation plans shall be updated by a water user at 5-year intervals and submitted to the Regional Director for review and approval. Water users, including those who have submitted or designated State-required water conservation plans, shall update their water conservation plans by submitting addenda that include the following information: an evaluation of accomplishments in water conservation during the previous five years; a discussion of future water needs; water conservation opportunities, limitations, and goals; and time schedules for implementing new or modified water conservation measures.

(f) *Notice of plan deficiency.* If the Regional Director or an appropriate State authority determines that a water user is applying Colorado River water to a nonbeneficial or unreasonable use, or is making an unreasonable diversion, the Regional Director may direct a water user in writing to modify the water conservation plan to address specific goals, measures, and time schedules for implementing actions to reduce such nonbeneficial or unreasonable use or unreasonable diversion within a reasonable time frame. Upon such determination, the Regional Director shall follow the procedures set forth in 43 CFR Part 417. Such determination is separate from the determination of nonuse under § 415.10(b). The Regional Director may also direct the modification of water conservation plans to meet the requirements of the appropriate State authority.

(g) *Reduction in diversion request.* If a water user fails to take actions required to correct the nonbeneficial or unreasonable use of Colorado River water within the designated time period, the Regional Director may reduce the water user's diversion request, in accordance with the procedures set forth in 43 CFR Part 417, in an amount equal to the amount of water that the Regional Director determines is nonbeneficially or unreasonably used. Any such reduction shall continue to be made until the water user has eliminated the nonbeneficial or unreasonable use. This reduction in diversions is separate from the reduction in entitlement pursuant to § 415.10.

§ 415.18 *Environmental compliance.*

Reclamation will be responsible for ensuring compliance with the National Environmental Policy Act, the Endangered Species Act, and other applicable laws and regulations as required for actions taken pursuant to these Regulations. Such actions may include, but not be limited to, assignments, transfers, exchange of water, temporary sale of water, reductions of entitlements, vegetative management activities, and wheeling non-Colorado River water through the Colorado River. A water user may prepare the appropriate documentation for compliance or use the services of a consultant, but the documentation must meet Reclamation's requirements and be adopted by Reclamation to satisfy applicable environmental requirements. The cost of environmental compliance shall be borne by the water user.

§ 415.19 *Administrative and other fees.*

(a) *Administrative fee.* Reclamation will assess an annual administrative fee to each contract holder to recover costs associated with on-going activities required for administering the contractual entitlements to Colorado River water as provided in these regulations and 43 CFR Part 417. The fee will consist of two parts: (1) a basic rate for all water users that reflects Reclamation's estimate, based on historical experience, of the average base cost of administering a contract entitlement, and (2) a variable rate that reflects Reclamation's estimated additional costs, in excess of average base cost, to administer the specific water user's entitlement. The fee will be based upon the cost associated with normally reimbursable functions exclusive of costs associated with functions that are traditionally considered nonreimbursable or reimbursable costs recovered from other sources. Reimbursable functions may include, but not be limited to:

maintenance of water ways and diversion facilities, scheduling water deliveries, developing the AOP for the Lower Colorado River, monitoring and forecasting water demand and use, compilation of records in compliance with Article V of the Decree and other administrative records, and general contract administrative functions. The fee will be updated and revised as deemed necessary by the Regional Director.

(b) *Payment and adjustment of administrative fee.* The Regional Director will adopt an administrative fee as provided in paragraph (a) of this section in consultation with the water users. The fee shall be payable in advance on October 1 of each year or as otherwise directed by the Regional Director. The basic rate portion of the fees shall remain in effect until adjusted by the Regional Director. Such adjustments shall be made no more often than once every five years and only after consultation with the water users.

(c) *Other fees.* The Regional Director will assess fees to individual water users to recover the actual costs associated with performing non-recurring activities as required to administer a specific water user's entitlement. Such activities may include, but not be limited to: development or modification of water delivery and other contracts; special studies associated with facilitating water transfers and assignments; compliance with the National Environmental Policy Act and other environmental laws; mitigation for the effects of water transfers or other special operating changes; and special studies to determine return flow credits. The fees may vary for each user as circumstances require.

(d) *Billing process.* Normally, water users will be billed annually for the cost of activities identified above in paragraph (b) and any other payments due the United States. If a specific activity must be funded by the water

user prior to its accomplishment by the Regional Director, bills will be issued as necessary. A water user will be required to pay each bill in full within 30 days of receipt of the billing. Failure to pay any bill when due may result in lack of completion of any approved activities or cessation of delivery of Colorado River water upon 30 days' notice and may subject the water user to other penalties as described in § 415.20.

§ 415.20 *Penalties.*

(a) *Reduction of entitlement.* Entitlements may be reduced by the amount that the Regional Director or the appropriate State authority, with the concurrence of the Regional Director, determines to be nonuse in accordance with the nonuse evaluation factors set forth in § 415.10(a).

(b) *Enforcement costs for preventing nonuse.* If a user refuses to reduce its diversion of water when so directed by the Regional Director in accordance with the provisions of § 415.10, that user may be subject to paying all reasonable costs, as determined by the Regional Director, incurred by the United States after the issuance of said order to enforce the reduction in the user's entitlement.

(c) *Enforcement costs for preventing use by an unauthorized user.* When a user is determined to be an unauthorized user, all reasonable costs incurred thereafter by the United States associated with stopping the unauthorized use and preventing such unauthorized use from reoccurring in the future, as determined by the Regional Director, shall be assessed to the unauthorized user.

(d) *Late payment.* Bills not paid in full by a water user by the due date shall be subject to interest, penalties, and administrative costs on delinquent payments pursuant to section 11 of the Debt Collection Act of 1982 (Public Law 97-365). The interest rate shall be the greater of (1) the rate prescribed quarterly in the *Federal Register* by the Department of the Treasury for application to overdue payments, or (2) the interest rate of 0.5 percent per month prescribed by section 6 of the Reclamation Project Act of 1939 (Public Law 76-260).

(e) *Adjustment for overruns.* If a user consistently overruns its entitlement and does not make a good faith effort to reduce diversions to compensate for said over-

runs, as determined by the Regional Director, Reclamation may, after providing written notification to the user, review and modify the user's weekly orders until the user's diversions have been sufficiently reduced to adjust for the accumulated overruns.

§ 415.21 *Records and reports.*

(a) *Reports required.* From time to time the Regional Director may require reports from water users to administer entitlements to the use of Colorado River water within the Lower Colorado River Basin and will provide guidelines on content, frequency, formats, and other information. Water users may report by using forms, electronic communications, or by other means approved by the Regional Director. Failure to comply with such reporting requirements may require the Regional Director to collect the information at the water user's expense.

(b) *Information to be reported.* Information to be recorded by the water users and reported to Reclamation includes but is not limited to the following:

(1) Point(s) of diversion, point(s) of return, and flow data;

(2) Metering methodology and/or meter readings and required meter calculations;

(3) Statistical reports, including data on crop production and prices, population, water utilization, and relevant statistical information as may be requested by the Regional Director; and

(4) Any other information determined by the Regional Director to be reasonably necessary for the accurate monitoring and forecasting of consumptive use.

§ 415.22 *Procedures for final determinations of nonuse, nonbeneficial use, non-reporting of use, and unauthorized use of Colorado River water and appeals therefrom.*

(a) *Order to show cause.* Upon a preliminary determination of nonuse, nonbeneficial use, non-reporting of use, or unauthorized use, the Regional Director shall cause to be issued an order to show cause to the alleged nonuser,

nonbeneficial user, non-reporter, or unauthorized user (hereinafter "respondent"). The order to show cause will be served by certified mail, return receipt requested. The order shall require the respondent to show cause within 90 days why the Regional Director should not issue a cease and desist order stopping the user from using Colorado River water or an order reducing the user's entitlement on account of the alleged nonuse, nonbeneficial use, non-reporting of use, or unauthorized use.

(b) *Answer to order to show cause.* Within 90 days from the issuance date of the order to show cause, the respondent shall file a written answer to the order to show cause with the Regional Director.

(1) The respondent's answer to the order to show cause shall contain, as a minimum, the following information:

(i) Name of respondent;

(ii) Point of diversion;

(iii) Source of diversion (i.e., Colorado River water, wheeled water, or other source — must be specified and documented);

(iv) Method of diversion;

(v) Documentation of volume of diversion in acre-feet and how measured for each of the following categories:

(A) Beneficial use,

(B) Nonbeneficial use,

(C) Nonuse,

(D) Non-reported use, and

(E) Unauthorized use;

(vi) Best estimate of reasonable maximum future diversion requirement (if applicable);

(vii) Relevant background and descriptive information in support of the alleged nonuse, nonbeneficial use, nonreporting, or unauthorized use;

(viii) Legal basis supporting the respondent's use;

(ix) Conservation efforts;

(x) Reuse;

(xi) Agricultural users shall provide the following additional information:

(A) Crop report information,

(B) Acres eligible for irrigation by Colorado River water,

(C) Acres farmed,

(D) Cropping pattern (e.g., double cropping),

(E) Type(s) of crop(s) grown and acres put to each use, and

(F) Fallow or idled lands in acres;

(xii) Municipal users shall provide the following additional information:

(A) Number of service connections,

(B) Population served,

(C) Documented seasonal population, and

(D) Amount per capita use;

(xiii) Industrial users shall provide the following additional information:

(A) Number of service connections,

(B) Type of use, and

(C) Return flow quality.

(2) The answer shall respond with specificity to each of the items set forth above and shall expressly:

(i) Submit the matter without demand for an evidentiary hearing on the basis of written or other evidentiary materials and argument submitted with the answer; or

(ii) Demand an evidentiary hearing.

(3) An evidentiary hearing shall not be granted unless the respondent's answer demonstrates the existence of material issues of fact, supported by sworn affidavit, justifying such a hearing. If within 90 days from the date of issuance of the order to show cause, the respondent does not file an answer or request from the Regional Director an extension of time to file an answer, the respondent shall be deemed to have waived any further rights under this § 415.22.

(c) *Administrative hearing.*

(1) If the Regional Director determines that an evidentiary hearing is not warranted, the Regional Director shall, within 90 days from receipt of the answer, render a decision subject to the appeal procedure set forth in paragraph (f) of this section.

(2) The Regional Director will either issue a notice of hearing or a denial of the request for an evidentiary hearing within 30 days from receipt of the answer. The notice of hearing shall set forth the time and location of the hearing. The notice of hearing shall also notify the respondent that the respondent shall have the right to:

(i) Advice and assistance of counsel;

(ii) Call government witnesses upon a showing of need;

(iii) Confront and cross-examine all witnesses;

(iv) A hearing on the record;

(v) Present evidence on respondent's behalf subject to relevancy, materiality, and redundancy;

(vi) A written decision including findings of fact and conclusions of law;

(vii) Administrative appeal; and

(viii) Judicial review as prescribed by law.

(3) The Regional Director shall publish notice of the hearing in newspapers of general circulation in the affected area and shall make reasonable efforts to otherwise notify interested and affected parties. Such notice shall contain the information concerning intervention provided in paragraph (e) of this section.

(d) *Burden of going forward; burden of proof.* Respondent shall bear the burden of going forward and the burden of proof by a preponderance of the evidence. The hearing prescribed herein is administrative in nature and formal rules of evidence shall not govern, except that the hearing examiner may exclude irrelevant, immaterial, or redundant evidence. Within 90 days of receipt of the hearing examiner's recommended findings of fact and conclusions of law, the Regional Director shall issue a written decision including written findings of fact, conclusions of law, and notice of the right to appeal. Respondent and interested parties will be notified of the decision within 15 days of issuance of the decision.

(e) *Intervention of interested parties.* Interested parties may file a written request to intervene in the proceeding with the hearing examiner not later than 10 days prior to the date set for the hearing. All questions concerning intervention shall be determined by the hearing examiner.

(f) *Appeal.* Respondent shall have a right to appeal the decision of the Regional Director by filing a notice of appeal with the Commissioner within 20 days of the date

of issuance of the decision. The appeal must be filed with the Commissioner within 20 days following the date of filing of the notice of appeal. The administrative record shall be forwarded to the Commissioner upon request of the respondent. The decision of the Commissioner shall constitute the final decision of the Department and no further administrative appeal shall be available.

(g) *Coordination with Department of Justice.* If a water user does not comply with a decision of the Regional Director, or the Commissioner after appeal, ordering the user to cease and desist from using Colorado River water or reducing the user's entitlement on account of nonuse, nonbeneficial use, non-reporting of use, or unauthorized use, the Regional Director may refer the matter to the United States Department of Justice for enforcement assistance. If the entitlement of a user with a PPR is reduced pursuant to these regulations or State law, the Regional Director, in coordination with the Department of Justice, shall take the necessary action to have the reduced entitlement reflected in the Decree.

United States Department of the Interior

BUREAU OF RECLAMATION
LOWER COLORADO REGIONAL OFFICE
P.O. BOX 427
BOULDER CITY, NEVADA 89005

IN REPLY
REFER TO:

LC-115
WTR-4.10

JUN 05 1991

Mr. Gerald R. Zimmerman
Executive Director
Colorado River Board of California
770 Fairmont Avenue, Suite 100
Glendale CA 91203-1035

Dear Mr. Zimmerman:

As you are aware, for a number of months we have been working with the Colorado River water users in California in an attempt to define a method or methods by which we can assign responsibility for inadvertent overruns which may occur among the first three water use priorities defined under the California Seven-Party Agreement. As you know, the entitlement was exceeded last year and we find it impossible under the existing California Seven-Party Agreement and Agreement of Compromise to equitably assign responsibility for offset of overruns. We are concerned that the resolution of the matter is not proceeding in a timely manner.

Accordingly, we are writing to request that the Colorado River Board of California (Board) take the lead in facilitating discussions among the entities governed by the California Seven-Party Agreement to arrive at a recommendation or recommendations on the division of water between those holding the first three priorities. We would like to have the Board's recommendation as soon as possible but no later than March 31, 1992.

We would like to see the entitlements defined in such a manner that would not only equitably assign responsibility for inadvertent overruns, but also establish a system that will encourage and facilitate conservation and transfer of water among California entities. As you are aware, the elastic water entitlements under the California Seven-Party Agreement make conservation and transfer agreements difficult to obtain.

We recognize the sensitivities among the California users regarding the priorities established under the existing shared entitlement. We believe that the shared entitlement can be divided, while maintaining the user's priority, in such a manner as to be advantageous to all of the parties. We believe that such a division is also in the best interest of the State of California and consistent with the State's present and future water management needs.

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We recognize the difficulties involved in reaching agreement and are hopeful that it will be achieved. However, if you are unable to reach agreement and cannot forward to us a recommendation on the division of the water we will, out of necessity, have to administratively divide the water.

We can assure you that we will seriously consider any recommendation that we feel is legally defensible and allows us to administer California's Colorado River water apportionment in an equitable manner.

Thank you for your attention to this matter. We are willing to assist in the resolution of this issue in any way you wish.

Sincerely,

ROBERT J. TOWLES

Robert J. Towles
Regional Director

cc: Commissioner
Attention: W-1000

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Blythe CA 92225

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United States Department of the Interior

BUREAU OF RECLAMATION
LOWER COLORADO REGIONAL OFFICE
P.O. BOX 427
BOULDER CITY, NEVADA 89005

IN REPLY REFER TO: LC-440 WTR-4.10

June 28, 1991

Mr. Gerald R. Zimmerman
Executive Director
Colorado River Board of California
770 Fairmont Avenue, Suite 100
Glendale, CA 91203-1035

Subject: Proposed Regulations for Administering Entitlements to Colorado River Water in the Lower Colorado River Basin (Water Rights)

Dear Mr. Zimmerman:

By letter dated May 22, 1991, you were provided a copy of the subject proposed regulations. In response to recent requests for additional time to review and comment on the regulations, and as discussed with Mr. Dick Angelos, this letter is to advise you that the period to provide comments is being extended through August 15, 1991. A revised Schedule of Events is enclosed which shows changed dates for the remaining action items.

Sincerely

ROBERT J. TOWLES

Robert J. Towles
Regional Director

Enclosure

IMPLEMENTATION OF REGULATIONS FOR ADMINISTERING ENTITLEMENTS TO COLORADO RIVER WATER LOWER COLORADO RIVER BASIN

SCHEDULE OF EVENTS

Action Item	Date
Outline requirements of regulations.	Completed
Develop draft regulations.	Completed
Draft regulations distributed for in-house review.	Completed
Comments due from all offices within the region.	Completed
Draft regulations sent to Denver, Upper Colorado Regional, and Washington Offices for review.	Completed
Development of public involvement plan due.	Completed
Comments from Regional, projects, and Washington offices.	Completed
Advance Notice of Intent to Propose Rulemaking published in *Federal Register*.	Completed
Comments from Denver and Upper Colorado Regional offices.	Completed
Draft regulations provided to Lower Basin States and Colorado River Tribes Coalition for review.	Completed
Comments due from States and Coalition.	08/15/91
Draft regulations sent to Denver, Washington, regional divisions and offices, and projects for final review before submittal for publication.	09/30/91
Completion of Determination of Effects. (See note below).	09/30/91
Notice of Intent to Propose Rulemaking published in *Federal Register*.	10/11/91
Comments due from in-house review.	10/21/91
Final draft regulations submitted for *Federal Register* publication.	11/08/91
Publication of draft regulations in the *Federal Register*.	12/13/91
Copy of *Federal Register* notice mailed to Lower Basin States, Indian tribes, water users, and interested parties.	12/23/91
Public hearings.	01/27/92 02/07/92
Comments on proposed regulations due.	02/11/92
Proposed final regulations and responses to public comments to Washington for review.	05/01/92
Comments due from Washington.	06/08/92

Action Item	Date
Final regulations submitted for publication.	07/13/92
Publication of final regulations in *Federal Register*.	09/01/92
Regulations become effective.	10/01/92

Note:

If the "Determination of Effects" results in a decision that the proposed rule is "major" or has a significant economic impact on a substantial number of small entities, Reclamation will be required to submit the proposed regulations to the Office of Management and Budget (OMB) for review. OMB will likely take the full 120 days they are allowed for review and the remainder of the schedule will have to slip to permit OMB the review time it needs.

We anticipate that a Categorical Exclusion will provide the appropriate level of compliance with the National Environmental Policy Act for implementation of the regulations; additional slippage of the schedule could occur if more extensive environmental compliance is required.